

RUMSON ZONING BOARD OF ADJUSTMENT
JULY 17, 2012
MINUTES

Chairman Conklin called the regular meeting to order at 7:30 p.m. with the Pledge of Allegiance. The Roll was called with the following members present: Conklin, McGuire, Atwell, Wood, Blum, Gummer, Brodsky, Thompson, Duddy. . Also present: Bernard Reilly (Board Attorney), Fred Andre (Zoning Officer), Bonnie Heard (T&M Assoc.), State Shorthand.

The requirements of the Open Public Meetings Act were stated as met.

Mr. Andre was sworn in at this time.

Chairman Conklin stated that the applications of **Randolph Rosen, 2 Broadmoor Drive**, and **Patrick & Sara McElduff, 96 Rumson Road**, have been rescheduled to the August 21st meeting.

Chairman Conklin announced that Alan Fendrick, long-time Rumson municipal volunteer, passed away recently. Mr. Fendrick had donated much of his time to the Borough over the past years.

Yellow Brook Property Col, LLC, 15 Kemp Ave.

Robert Curley, attorney, appeared on behalf of the applicants. Exhibits presented include:

- A-1 – Colored rendering of existing lot conditions;
- A-2 – Colored rendering of proposed lot conditions;
- A-3 – Rendering of the prior approval from 1/2011;
- A-4 – Colored rendering of the proposed house;
- A-5 – Seven photos of the existing lot conditions.

The proposal is to demolish an existing home and construct a new home on the lot. They are requesting a variance based on the characteristics of the lot, including existing conditions and shape of the lot, topography, and the presence of mature trees. The two existing conditions are lot width (197 existing / 200' required), and lot circle requirements (76.2 existing / 115' required). Two variances are related to where they are proposing to locate the home on the property, based on topography and tree removal. There is a front yard setback variance (77.6' existing / 100' required), as well as the height variance. Also, there is a driveway width variance that deals with a turn around in the front of the home.

Mr. Decina, architect, reviewed the characteristics of the lot (via A-1). He described the location of the lot as a developed property with an existing dwelling on the site. The property width is 197.57'. The current house is outside the front setbacks and side setbacks (59.8' front setback, 45.6' right side yard, 66.3' left side yard, and 277' to the rear). There are 20 specimen trees on the lot, which are shown. There is also a masonry wall along the borough right-of-way. A photo of the property showing the masonry wall was shown.

Via A-2, Mr. Decina showed the Board the proposed plan, including the driveway, walkway, and grading. They are proposing to have the house situated 76.6' from the right-of-way with a 15'

wide driveway. They propose a two-tiered landscaped wall to preserve the trees on the property. Bringing the house forward will help preserve five specimen trees, and adding the retaining wall will also help preserve some specimen trees. The turnaround area is for safety concerns for visitors. The grading will match what exists, with the exception of the house moving back about 18', with the same grading pattern. Mr. Decina showed the Board a photo of the specimen trees.

Chairman Conklin asked about the height variance proposed, and Mr. Decina explained the height proposal, in relation to the borough ordinance. On the two sides along the street, nothing is proposed. The first floor of the proposed house will be about 1.19" different than the existing house. The proposed home conforms to the 35' height.

Mr. Blum asked about the finished first floor as it relates to the street, which is about 3.5' higher. Via A-3, Mr. Decina showed the previous approved plot plan (7/29/11 – revised 11/8/11). He showed their new plan as it relates to this plan. The approved house was located within the setback requirements. This would have required the removal of five specimen trees. There are also grading issues with the prior plan, for which no grading plan was submitted, according to Mr. Curley. The new plan only describes an area where no trees will be lost. He feels this justifies their reason for bringing the house closer to the street. He feels it is a better condition than what was previously approved. The square footage of the house for the proposed plan is 2,200 sq. ft. less than what was previously proposed.

Chairman Conklin asked about the amount of fill proposed for this plan and how it will affect the trees. Mr. Decina said there will be some fill, and the area that will be filled is about 232' from the largest specimen tree. Much of the fill area will be taken up by a basement, which will have another walk out area.

An architectural plan showing the rear area was presented, which shows the grading similar to what exists today.

Mr. Reilly advised that the Board could accept the newly presented grade and determine that no variance is required.

The proposed driveway width required a variance for the width within the 100' setback line. Mr. Decina noted the site distance safety area, which they feel is addressed by the proposed turnaround area in the driveway. This additional width would also allow some visitor parking on the site, since none is permitted on Kemp Ave.

The drainage was explained by Mr. Decina, noting that the drainage patterns will follow the natural swale along the property line. The driveway could be gravel, if the Board prefers, and would be constructed according to the Storm Water Management ordinance in the borough. He noted that the prior approval brought the driveway closer to the side property line, causing more disturbance in the area. Their plan allows for a wider side yard along the driveway, which provides better runoff along the swale on the site.

Mr. Mumford, builder & company principal, was sworn in at this time. He explained, via photos provided, that their smaller-proposed home would preserve many of the trees that would have been lost in the prior approved plan. Their plan designs to the lot, and their house needed to be made smaller to preserve the character of the lot. He has met with neighbors to review their plans.

The existing wall along the property line was questioned by Mr. Reilly, who commented that he did not know who owns this wall, and this would take significant investigation to discover the answer. The right-of-way to the street would require a title search; however, he does not think they need to resolve this question today.

Mr. Mumford explained that the wall near the driveway will not change. Although there are areas that require repair, he has no plans to take down this wall, and any repair might be a question for borough council, based on who is determined to be the owner of the wall. Mr. Reilly reviewed the prior resolution regarding this wall, which required that the wall not be removed by the applicant or any subsequent owner.

Mr. Joseph Clark spoke from the public in support of the application, noting the state of disrepair of the current property. He thinks this will be a nice addition to the neighborhood and help real estate values. His only concern is with the runoff, and he has heard the testimony from the experts and hopes this will be managed, as discussed. The 10' buffer along Mr. Clark's property was reviewed from the prior approval, and Mr. Decina stated they also show a 10' buffer along this property line with this proposal.

Cushing Condon was sworn in and expressed a concern regarding the wall on the street, asking if it was to be preserved. Mr. Reilly said that the Board does not control the wall, and they are not sure who really owns the wall. The applicant has agreed that if anything is done to the wall, they would need to go to borough council for approval. Also, a condition will be included that notice be given to the nearby property owners regarding any request to change or repair the wall.

Mr. Condon also asked the Board about the removal of trees on the back half of the property. Mr. Mumford responded that the trees along the property line are not being removed. The trees in the rear are primarily locusts and maples, which are not great trees. They may remove these trees from the middle of the yard to provide a usable area for the lot. Significant specimen trees in the rear will stay, and all the trees along the common border will also stay. Mr. Condon said that the ultimate owner of the property may prefer to keep these trees, and he suggested they wait to see what they would prefer. Mr. Mumford said he is the current owner, and he believes that these areas of the yard could be utilized for a pool or play area for children. This area is not now attractive and has lain fallow for some time. The junk trees will be removed, and the significant trees will be maintained.

Mr. Condon thinks the trees in question are very large trees and not "underbrush" as described. Mr. Mumford described the trees as 10" – 20" trees that are not the types of trees you would want to keep, although they are large in size. Removing these trees would maximize the values of the property by providing a yard area for any potential property owner.

Mr. Andre confirmed that the trees in question are not restricted by the ordinance, but a tree permit would still be needed.

There were no other questions or comments from the public.

Mr. Blum asked about the height of the east dormer from the tip to the grade. Mr. Mumford said it would be in the 38' range. It is 35' to the middle ridge. The roof design serves to scale a home down as to height. The distance from the eaves to the grade is 30'.

Mr. Blum thinks this is a much better solution for the placement of the house on the lot, with less runoff than what was previously approved. He does not think there has been an engineering review of the grading or the driveway, and he thinks a condition should be that any approval would be subject to an engineering review of the grading plan. If a variance is deemed necessary, the Board would approve it.

Chairman Conklin agrees that it is a good location for the house.

Ms. Gummer agrees and also agrees that it should be contingent upon the engineer's review of the grading plan.

Mr. Reilly noted that this was also a condition of the prior resolution and will continue with this resolution.

Mr. Brodsky asked about the front setback, which is 20' closer than required. He asked if the house could be pushed back to get a better setback. Mr. Decina noted that this would incur the shifting of the driveway, which would encroach upon the tree roots. Also, this would bring it closer to the neighbor's house. Mr. Mumford thinks the house has a reasonably changed roof that will not look too high on the lot.

Chairman Conklin thinks this revised proposal is reasonable.

Mrs. McGuire asked if they considered doing a circular driveway. Mr. Mumford said this would cause too much impervious surface and create huge engineering issues, as well as encroaching on the front wall. His plan is the least intrusive for the lot, in his opinion.

Mr. Duddy thinks they have addressed all the issues. He thinks the plan preserves many significant trees, and he applauded their attention to detail. He thinks they have improved upon the previous application. He moved to approve the application with the condition that the engineers review the grading and the retaining wall in the front and rear. Mrs. McGuire seconded.

Roll Call Vote: Ayes – Conklin, Thompson, Duddy, Blum, Atwell, McGuire, Wood, Brodsky,
Gummer

Nays – None

Motion carried.

Locals Creative Fresh Takeout, 112A Avenue of Two Rivers

Kevin Kennedy, attorney, appeared on behalf of the applicants. He noted that this is a unique application that seeks site plan approval to operate a take-home food service establishment. They feel there are limited offerings in the ordinance with respect to their proposed type of use. They were classified as a restaurant, although they do not agree with this, based on the definition in the ordinance. Also, it is suggested that a take-out restaurant use is not permitted in this zone, but restaurants are permitted.

Ms. Heard was sworn in at this time and explained that the ordinance defines a restaurant as a place where food is consumed on site. In this case, the food is not being consumed on site, which means it is not an approved use. Mr. Kennedy said they do require a use variance before this Board. They noticed for an interpretation as to this issue. He noted that the borough will be reviewing some of the existing ordinances, and may change some of the definitions and classifications. This application does not include much construction work, and they will be operating within the existing site constraints.

Ms. Heard reviewed the outstanding completeness issues, and Mrs. McGuire moved to deem the application complete. Mrs. Atwell seconded.

Roll Call Vote: Ayes – Conklin, Thompson, Duddy, Blum, Atwell, McGuire, Wood, Brodsky,
Gummer

Nays - None

Motion carried.

Laird Stratton was sworn in and stated he is familiar with the plans for the property. He reviewed his background for the Board, noting he has been a contractor in Rumson for the past 30 years. He reviewed the prior use of this property, which was a medical professional office. That use was approved by the Planning Board. The site is 3,750 sq. ft. in size where 12,200 sq. ft. would be required. This is a pre-existing nonconforming lot area. There is a one-story building on site, which is 766 sq. ft. in size. They have photos of the existing building, signs, etc. (A-1), which Mr. Stratton took this past week. He described the photos, noting the area of the proposed take-out area and other elevations around the building, including a handicapped parking space and five additional parking spaces on site. Also shown is the parking lot traffic flow. There are two other parking spaces on nearby borough property. Mr. Stratton described the surrounding uses, including a library, real estate office, restaurant, and single-family residences. They propose to utilize the site as a take-out food establishment.

Mr. Stratton described their operation, which will offer a menu of sandwiches, salads, pizza (no slices), baskets to go, etc. They would propose to use locally grown products. People would call in and place their order to be picked up later. There would be no drive through aspect. The proposed maximum hours of operation would be 7:00 a.m. – 10:00 p.m., depending on how the business is received. They anticipate their busiest hours would be 11:30 a.m. – 3:00 p.m. and then 5:00 p.m. – 7:30 p.m. The total amount of employees would be six, with three maximum on site at any one time (2 chefs and one counter person). No liquor license is involved. They anticipate local families and businessmen to be their customers. No additional activity is proposed, and there will be no outside seating. Garbage collection would be private, consisting mostly of food waste and recyclables. The garbage would be collected twice a week.

The prior resolution for the Wellness Center was shown and marked A-3. The parking was explained and included eight spots allocated for their use – six on the site and two next door. There are also six other public parking spots on the road. A deed of easement agreement was shown to the Board dating back to January, 2008 (A-3.1), which describes the parking, which Mr. Stratton feels will be sufficient.

The interior renovations were explained and will include a kitchen area and take-out area. A limited amount of interior work will be required. Mr. Stratton explained the proposed floor plan, as shown as part of their plan. They do not propose any delivery service at this time. The exterior renovations will be minimal. There is nothing proposed to change the footprint of the existing building. They are proposing to use the existing sign and just change the name and logo.

Mr. Stratton stated that he and a partner will be running the business, and he has current experience, as does his partner and their chefs. He does not think this type of use will generate any loitering. All food would be consumed off premises. There is no change proposed from the existing lighting, which meets the approved levels in the borough. He does not believe there will be any more noise than what was previously experienced by the former use.

Delivery and pickup of the food will be done personally. To his knowledge, the only additional approval needed is from the Monmouth County Planning Board, which they think will be a “letter of no interest.” Mr. Stratton has received the memo from T&M Assoc., (dated 5/31/12), and they would agree to comply with all conditions set forth in that memo. They will provide a trash enclosure with a board-on-board fence. Chairman Conklin commented that a restaurant is more of a trash generating business than a wellness center, and Mr. Stratton described their proposed dumpster and recycle areas. The garbage will be picked up twice a week – early to mid-morning. Chairman Conklin feels there may be a problem with the access to the trash area. Ms. Gummer pointed out that the pickup time seems to be planned for a time when there would not be many customers on the site. Mr. Stratton said he will be in a position to control the times that his waste management company picks up the trash. Mr. Duddy asked if one dumpster would be sufficient. Mr. Stratton said he did not think they would be generating much cardboard.

Mr. Blum asked how many customers they anticipate in a peak period during the day. Mr. Stratton said this is difficult to answer at this point. Ms. Heard asked if they considered expanding the trash enclosure to allow room for future growth. Mr. Stratton said this could be a possibility if needed, or they could increase the number of pickups per week.

There was a short break at this time, and the application will be continued later in the meeting. At the resumption of the meeting, the Board decided to consider the resolutions and minutes for approval from the last meeting. (Mrs. Atwell left the meeting at this time – 9:55 p.m.)

Resolutions

1. **Boulder Construction LLC, 6 Nicol Terrace** – approval to raze existing house and construct new residence;

2. **Christopher & Denise Mauthe, 165 Bingham Ave.** – approval to raze existing house and construct new residence;

Mrs. McGuire moved to adopt these resolutions, and Dr. Wood seconded.

Roll Call Vote: Ayes (Eligible) – Conklin, Blum, Wood, McGuire, Gummer

Nays – None

Motion carried

3. **George & Irene Wanat, 14 Conover Lane** – denial of application to install 10' deer fence across the rear and north side of their property

Mrs. McGuire moved to adopt the resolution, and Dr. Wood seconded.

Roll Call Vote: Ayes (Eligible) – Conklin, Blum, Wood, McGuire, Gummer

Nays – None

Motion carried.

Approval of Minutes

Motion was made and seconded to approve the June minutes, with corrections. Voice Vote: Ayes, unanimous.

Locals Creative Fresh Takeout (Continued)

Mr. Stratton further testified that he spoke to his partner during the break regarding the business volume, and they feel they will have an average of 15 customers per hour during the peak lunch and dinner hours.

At this time, Christine Nazzaro-Cofone was sworn in, and the Board accepted her credentials as a professional planner. She is familiar with the plan. She noted that the NB Zone permits many uses, but the ordinance does not define exactly what they are proposing. They are requesting a D-1 use variance for this business.

Via the plan provided (Sheet #2 of the site plan), Mrs. Nazzaro-Cofone pointed out the subject property, including the one-story building, the six parking spaces in the rear of the property, and the two parking spaces reserved for their lot as per an easement noted in the prior approval resolution for the Rumson Wellness Center, which they feel they are also entitled to use, as well as the seven spaces nearby in the borough parking area, which is similar to the situation with Brennan's and Un Dico restaurants, which also utilize borough spaces near their establishments. She feels this applies to the utilization of this lot.

This Creative Fresh take-out operation is a growing trend and provides a healthy option for the borough residents, as well as utilizing local produce and fruit. She thinks the criteria of the Land Use Law are advanced by this proposal. She noted there is no proposed interior seating and no area or opportunity to sit down. It is an 800 sq. ft. building, so the impact and intensity will be limited by the size of the structure and what they can do with it. She feels it is a good use for the building and will provide a good use for the area. She noted several uses that could be allowed in this zone that would generate a high turnover of traffic and be more intense than the subject application. She thinks the impact of this use will not have a negative impact in this zone. She

cited from the ordinance as to the definition of a restaurant, pointing out that the proposed use would not be a departure from what was allowed in this zone as defined in the ordinance. She noted that reasonable conditions can be imposed, according to the Board's discretion, as to issues they feel might cause concerns, such as the hours of garbage pickup, etc. She reviewed the issues that lead her to believe this would be a good operation and use that could be granted and not present a detriment to the public good.

Ms. Heard noted that Lot #13 is borough property. Ms. Nazzaro-Cofone explained the surrounding uses and parking, which she feels would not be competing for the existing spaces in the borough parking lot.

Mr. Thompson asked if there is a parking requirement for this facility, and Ms. Heard said there is no specific parking requirement for a "take-out" facility, although you look for something with a similar use, such as a restaurant. If a restaurant standard were used, they would need 16 spaces, based on the sq. ft. of the building. It was noted that there are no "seats" in this use, so a restaurant definition should not apply in this case. It was also noted that most of the restaurants in town do not meet the standard for restaurant parking.

Mr. Duddy feels this is much different than a restaurant and more like a liquor store or other retail store, which would require four parking spaces, based on the square footage of the building. Based on this standard, Ms. Nazzaro-Cofone feels they have adequate parking.

Mrs. McGuire asked about a potential smell, and Ms. Nazzaro-Cofone said their "fresh" concept would not be the same as a "fast food" restaurant.

If approved, they hope to open within a few months. The menu would be sandwiches, specialty foods, salads, pizza, etc.

Mr. Reilly asked about the potential of it becoming too successful and generating too much traffic. Ms. Nazzaro-Cofone said that the size would limit the amount of business. There may be times when people may walk in and wait for their food; however, there will be no seats within the building or outside.

Mr. Blum asked how this would be different from Brennan's Deli, and Mr. Stratton explained it would be more of a completed package that people would pick up for day at the beach, sporting event, etc.

Leonard Nielson was sworn in and said he owns the property next door (realtor). He thinks this is more of a restaurant, and he does not think they will be able to move the people in and out as they say. He also mentioned the area between the two buildings, where there is a narrow driveway. He thinks a detriment and hazard would occur with a large number of vehicles attempting to use this access area. He noted that their employees would take up three of the available parking spaces, which he believes does not leave enough parking for the customers. He noted that the parking area mentioned behind their building is used by Gloria Nielson employees and customers. He does not agree with their position on the parking. He thinks delivery trucks will also pose a problem using the common driveway. The garbage issue will

also pose a problem, in his opinion. He appreciates the unique idea for this business, but he does not think this is the right location, which is mostly a residential-type area. All the other uses for this building have been low volume uses. Ms. Heard also explained that the agreement for the use of this access area was never pursued in the prior approval.

Lawrence Thiry, 115 Avenue of Two Rivers, was sworn in and expressed his objection to putting an eating establishment in this location, which will be disruptive, in his opinion, since it is mostly a residential neighborhood. Traffic coming in and out would affect the neighborhood. He noted that the spaces referred to behind the buildings are used by many of the neighbors and library patrons already, and it is an active parking situation. Adding this many additional cars will not work, in his opinion. Operating until 10:00 p.m. at night will definitely affect his property, and he thinks there will be noise generated by the patrons. He thinks people will stay and eat in their cars. He also thinks the garbage will cause a problem with rodents and odors. He does not think the access driveway is adequate. He does not think the Board should approve the application.

There were no other comments or questions from the public.

Mr. Reilly questioned the legality of using the driveway, which is owned by Mr. Nielson. Ms. Nazzaro-Cofone referred to the easement, noting it gives the public the right to access the seven spaces in the rear of the buildings. Mr. Reilly noted that this access does not give the right to access the applicant's lot. Other businesses utilized this area in the past, although now Mr. Nielson is objecting to the proposed use. Mr. Reilly does not see a legal right to get to the six spaces behind the building.

Mr. Blum explained that an arrangement was made between the borough and Gloria Nielson, who granted the borough an easement on the east side to provide circulation. In this context, the access along the side of the building was a part of the overall approval. Whether the property owner (Gloria Nielson) has a right to change this is questionable. The record shows that the borough has the access via an easement to the applicant's property, which was a part of the overall agreement at that time. Mr. Reilly sees a problem with this, because the use of the easement could be increased, which would exceed the intent of the easement. Mr. Blum thinks the question is whether the Board is satisfied with the use variance; however, Chairman Conklin thinks the parking access makes a huge difference.

Mr. Kennedy thinks changing the use should tie in with the existing easement on the site or question the validity of the 1994 agreement. He asked Mr. Stratton to comment on the deliveries, and Mr. Stratton stated they would be using small delivery trucks, similar to UPS vehicles.

Mr. Reilly thinks there is a general legal issue as to the access to the parking spaces. Assuming they have a right to access all the spaces, he asked the Board if they would consider approving the application.

Chairman Conklin thinks the access is the fundamental issue.

Mr. Blum does not think the applicant has demonstrated any hardship or other criteria and has not presented any justification for the use variance, which is not suited for this property, in his opinion. He would not be in favor of approving the application.

Mr. Brodsky thinks the use could occur, although it might not be an appropriate site for this use. He would like more clarification as to the issues involved.

Mr. Thompson thinks there are many questions, but there have been businesses there that have occurred. Concerns with the easement are important and need to be further investigated. The lot is adequate, and they made a good point that many of the businesses that would be allowed would not be as feasible for the site.

Ms. Gummer still has questions, but she likes the idea of this business coming into town and feels it is something that would benefit the community. She agrees that more testimony needs to be provided regarding parking and clarification of the easement, which could negatively impact the application in some ways; however, she likes the concept and would probably be a customer.

Mrs. McGuire also likes the idea and thinks it would be different than many of the other uses that would be allowed. She does not think it is a place where anyone would hang around and would be an "in and out" type of place. She does not see the parking as a problem, because it has been used the same way for many years. It may be a legal problem that does not matter to the Board, but is one for the town to rectify.

Mr. Duddy thinks there are many unanswered questions, and he does not have an opinion at this time.

Dr. Wood agrees there are many questions that need clarification.

Chairman Conklin likes the concept, but is not sure this is the right spot.

The application will be carried to the next meeting (8/21/12). Mr. Kennedy stated they will consent to extend the time frame, and no further notice will be required for this meeting. Mr. Reilly will further investigate the legal issues regarding the access to the property.

Ms. Heard also recommended the applicant talk to borough officials regarding grease traps.

There being no further business, motion was made and seconded to adjourn. Voice Vote: Ayes, unanimous. The meeting was adjourned at 11:20 p.m.

Respectfully submitted,

Patricia Murphy
Clerk